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November 6, 2019

VIA ECF

The Honorable Brian M. Cogan, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Fischler v. Sixx Nouveauxx Design Services LLC., *et al.*
Case No. 1:19-cv-05136-BMC

Dear Judge Cogan:

We represent Plaintiff Brian Fischler in the above-referenced website accessibility action pursuant to Title III of the Americans with Disabilities Act, as well as analogous New York State and City laws. We write to respectfully request a second adjournment of the Initial Pretrial Conference, currently scheduled for November 14, 2019 at 10:30a.m.

Plaintiff filed this action on September 10, 2019 (Dkt 1). As such, his time to serve the Summons and Complaint pursuant to Fed. R. Civ. P. 4(m) runs on December 9, 2019. The Summons and Complaint was sent out for service via Guaranteed Subpoena Service Inc. ("Guaranteed Subpoena") on October 15, 2019. We were advised by Guaranteed Subpoena on October 31, 2019 that its repeated attempts at service were unsuccessful due to the fact that the Los Angeles address identified in the Summons is a gated property, which the process server could not access and repeated calls to gain access went unanswered. The very next day, November 1, 2019, we prepared a Waiver of Service request in accordance with Fed. R. Civ. P. 4(d)(1) and sent it to Defendant via USPS and FedEx. FedEx has confirmed that the package was delivered on November 4, 2019. Accordingly, Defendant now has until December 4, 2019 to return the executed Waiver.

Accordingly, we respectfully request an adjournment of the initial pretrial conference until the week of December 9, 2019, after Defendant's time to return the Waiver of Service.

This is the Second request for an adjournment of the Initial Pretrial Conference. If granted, the adjournment will not impact any other case deadlines, as no scheduling order has yet been



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entered. Defendant has not yet appeared in the Action, so we were unable to obtain Defendant's consent to this request.

We thank the Court for its time and attention to this matter.

Respectfully submitted,
LIPSKY LOWE LLP

s/ Christopher H. Lowe
Christopher H. Lowe